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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0710; FRL -9770-9]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: EPA is approving the submittal from the State of New Mexico pursuant to the Clean Air Act (CAA or Act) that addresses the infrastructure elements specified in the CAA necessary to implement, maintain, and enforce the 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or standard). The submittal addresses the infrastructure elements specified in the CAA necessary to implement, maintain and enforce the 2006 PM_{2.5} NAAQS. We find that the current New Mexico State Implementation Plan (SIP) contains the infrastructure elements for the 2006 PM_{2.5} NAAQS.

DATES: This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R06-OAR-2009-0710. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are

available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7128; fax number 214-665-6762; e-mail address *walser.john@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

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I. Background

The background for today's action is discussed in detail in our October 12, 2012 proposal (77 FR 62191). In that notice we proposed to approve the submittal from New Mexico that addresses the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 2006 PM_{2.5} standards. The submittal is dated June 12, 2009. We proposed to find that the following section 110(a)(2) elements are contained in the current New Mexico SIP and provide the infrastructure for implementing the 2006 PM_{2.5} standards: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); prevention of significant deterioration (PSD) and visibility protection (section 110(a)(2)(J)); air quality modeling data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

In addition, we proposed to find that New Mexico has adequately addressed one of the four required elements (or prongs) of CAA section 110(a)(2)(D)(i), the element which requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state. We are determining that emissions from sources in New Mexico (excluding Bernalillo County and Indian country) do not interfere with measures to prevent significant deterioration of air quality in any other state for the 2006 PM_{2.5} NAAQS (CAA section 110(a)(2)(D)(i)(II)).

Our October 12, 2012 proposal provides a detailed description of all relevant submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for this action closed on November 13, 2012, and we did not receive any comments. In a separate concurrent action also dated October 12, 2012, EPA proposed approval of SIP revisions that revised the state's PSD and Nonattainment New Source Review (NNSR) permitting regulations to address the requirements necessary to implement the 2006 PM_{2.5} NAAQS (see Docket ID EPA-R06-OAR-2011-033). That action will be finalized on or before this final action to allow full approval of the CAA section 110(a)(2)(c) infrastructure requirements.

II. Final Action

We are approving the submittal provided by the State of New Mexico to demonstrate that the New Mexico SIP meets the infrastructure elements for the 2006 PM_{2.5} NAAQS listed below:

- Emission limits and other control measures (110(a)(2)(A) of the Act);
- Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);
- Program for enforcement of control measures (110(a)(2)(C) of the Act);
- Interstate and international transport (110(a)(2)(D)(ii) of the Act);
- Adequate resources (110(a)(2)(E) of the Act);
- Stationary source monitoring system (110(a)(2)(F) of the Act);
- Emergency power (110(a)(2)(G) of the Act);
- Future SIP revisions (110(a)(2)(H) of the Act);
- Consultation with government officials (110(a)(2)(J) of the Act);
- Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are approving the portion of the New Mexico submittal that addresses the requirement of section (110)(a)(2)(D)(i)(II) of the Act that emissions from sources in New Mexico do not interfere with measures required in the SIP of any other state under part C of the Act regarding PSD for the 2006 PM_{2.5} NAAQS.

EPA is approving these revisions in accordance with section 110 and part C of the Act and EPA's regulations and consistent with EPA guidance. EPA's approval does not extend to areas within Indian country as defined in 18 U.S.C. Section 1151. EPA, or eligible Indian tribes, as appropriate, will retain jurisdiction and responsibilities under the Clean Air Act, Section 110 within Indian country.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 3, 2013.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

Part 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG-New Mexico

2. Section 52.1620(e) is amended by adding a new entry at the end of the second table entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				
Infrastructure for 2006 PM _{2.5} and Interstate Transport regarding noninterference with other states’ programs for PSD for the 2006 PM _{2.5} NAAQS	Statewide, except for Bernalillo County and Indian country	6/12/2009	[Insert Date of FR publication] [Insert FR page number where document begins]	Approval for 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD portion), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M)

[FR Doc. 2013-00731 Filed 01/18/2013 at 8:45 am; Publication Date: 01/22/2013]